Supreme Court, U.S.
FILED

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No. _____

**IN THE**

**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM 1996**

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Robert F. and Joanne M. Smith

Petitioners

vs.

David Richard Noyes, LLS

Respondent

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# PETITION FOR WRIT OF CERTIORARI TO THE STATE OF NEW HAMPSHIRE SUPREME COURT

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## PETITION FOR WRIT OF CERTIORARI

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50PP

## QUESTIONS PRESENTED

1. Does the New Hampshire State Legislature under RSA 310-A: 71 (Appendix L), clearly mandate, by the word **"shall,"** that a hearing be held on **all written complaints**?

2. Did the BLLS Letter of February 8, 1991 (Appendix K), introduced as indisputable evidence by Petitioners in all motions and at trial May 6-8, 1996, indicate that the BLLS understood the **"state of the law"** that a formal hearing **"shall"** be held on all **"written complaints"**

3. Was the BLLS ORDER OF DISMISSAL of Petitioners' complaint, **without an adjudicative hearing**, in violation of Petitioners' constitutional (R), civil (APPENDIX S), and statutory rights RSA 541-A:31 (P), to notice and hearing as well as in violation of legislative mandate, RSA 310-A:71 (APPENDIX L), that a hearing "shall" be held on "all written complaints," **both void** and **illegal**?

4. Was the dismissal of Petitioners' complaint by the BLLS with the authorization of the Attorney General (Appendix O), **without an adjudicative hearing,** a violation of Petitioners' constitutional (APPENDIX R), civil (APPENDIX S ) and statutory rights (APPENDICES L, P, X & Y) and the promulgation of the unlawful order (APPENDIX N), to the courts an unlawful act, the obstruction of justice?

5. Was the Respondent's use of the BLLS Order of Dismissal (APPENDIX N), in a Counter Claim, a void order, **an order promulgated without notice and hearing**, as required by law, RSA 541-A:31, (APPENDIX P), an order known to be both unconstitutional and illegal (Appendix N), an abuse of process?

6. **Did the trial court violate Petitioners' federally protected rights by allowing the Respondent to use the illegal BLLS ORDER OF DISMISSAL (APPENDIX N) in Respondent's counterclaim (APPENDIX T), for illicit monetary gain?**

7. **Did the trial court based on the evidence and law knowingly, consciously and intentionally misinterpretet (See Appendix W), the legislative mandate of N.H. RSA 310-A:71 (APPENDIX L), to influence the outcome of a jury decision,** ?

8. Did the New Hampshire Supreme Court decline Petitioners' NOTICE OF APPEAL, APPENDIX TO NOTICE OF APPEAL and MOTION FOR RECONSIDERATION, by claiming there were no questions of substantial law (APPENDIX B) raised, simply because Petitioners were laypersons pro se, when all documents contained indisputable evidence that: (A) the New Hampshire Board of Licensure for Land Surveyors dismissed Petitioners complaint, without **notice and hearing** in violation of the legislative mandate of N.H. RSA 310-A:71 **HEARINGS** (Appendix L), and RSA 541-A:31 (APPENDIX P) **AVAILABILITY OF ADJUDICATIVE PROCEEDINGS; CONTESTED CASES; NOTICE; HEARING AND RECORD**; (B) the Respondent used, as the foundation of a counter claim, the **void order** (APPENDIX N) of the BLLS; (C) This **illegal order**, over Petitioners' objections, was allowed by the court to be used to illicit monetary damages; and (D) the trial court, despite indisputable evidence and law, the BLLS letter of February 8, 1991 (Appendix-K) and the legislative mandate of N.H. RSA 310-A:71 HEARINGS (Appendix L) knowingly, consciously and intentionally misinterpreted N.H. RSA 310-A:71 (Appendix L), to damage Petitioners in the eyes of the jury?

9. Did the Respondent have a legal duty to Petitioners, to tell the truth, the whole truth and nothing but the truth, at trial under common law and a statutory standard of conduct, N.H. RSA 310-A:70 II subsections (c),(d),& (g) (Appendix X), and very, very, importantly under N.H. RSA 310-A:53 (I) **SAFEGUARD OF PROPERTY** (Appendix Y), when appearing as the singular expert witness for

defendants in a court action, a PETITIONERS' PETITION TO QUIET TITLE?

10. Did Petitioners complaint to the court on March 13, 1992, comply with the legislative intent of the Statute of Limitation, N.H. RSA 508:4, CONCEALMENT OF MATERIAL FACTS the three year limit not applicable, when there had been concealment of material facts. Petitioners first found out on March 14, 1991, what Respondent had concealed at trial (See Appendix M), and verified by his legal counsel on October 25, 1991 (Appendix Z). Petitioners' complaint was filed to the trial court, well within the three year statute requirement?

11. Did the New Hampshire Supreme Court in its dismissal of Petitioners' NOTICE OF APPEAL, claiming no substantive questions of law (APPENDIX ), and rejection of PETITIONERS' MOTION FOR RECONSIDERATION (APPENDIX A) intentionally overlook well documented and presented evidence, most in affidavit, of multiple violations of law to protect others. This evidence, which was indisputable, revealed: **(A) concealment of material facts; conspiracy to conceal material facts; false swearing (APPENDIX M ); (B) false unsworn statements by Respondents clients' attorney (APPENDIX J), but certified by the court reporter to be true, not hearsay; perjury; (C) subornation of perjury; (D) the trial judge's deliberate misinterpretation of the legislative mandate of RSA 310-A:71 (APPENDIX W), that a formal disciplinary proceeding need not to be held on all written complaints and (F) the trial judge's deliberate avoidance of the BLLS letter of February 8, 1991 (APPENDIX K) that under RSA 310-A:70 (APPENDIX X) it chose to hold disciplinary proceedings under part (b) WRITTEN COMPLAINTS.**

12. Will this Honorable Court deny Petitioners' Writ Of CERTIORARI, despite the facts presented which support the violation of Petitioners' federally protected rights, simply

because Petitioners are two elderly, laypersons pro se, without power, influence, or legal counsel, **a custom and practice of the New Hampshire Courts, trial and Supreme** despite the substantial questions of law raised at trial court and in Petitioners' NOTICE OF APPEAL with APPENDIX PETITIONERS' NOTICE OF APPEAL?

(13). By definition of the word substantial (substantive) (APPENDIX AA) does the questions covering violations of the legislative mandated of statutes meet the criteria of substantive law?

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**APPENDIX (K)**: Respondent's voluntary statement to the BLLS acknowledging the true participants in the Boundary Line Agreement his client and Inland Acres.

**APPENDIX (L):** Letter of February 8, 1991 from BLLS scheduling a prehearing conference with stipulation a formal disciplinary hearing would be held.

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**APPENDIX (O):** Excerpt from BLLS business records indicating Attorney General John Arnold authorized the illegal dismissal.

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**APPENDIX (Q):** Excerpt N.H. Attorney General Jeffrey Howard's brief to U.S. Court of Appeals.
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**APPENDIX (AA):** BLACK'S LAW DICTIONARY and the American Heritage Dictionary of the English Language definitions of SUBSTANTIVE (SUBSTANTIAL) LAW.

## TABLE OF AUTHORITIES CITED


| CASES | PAGE |
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| Appeal Astro Spectacular, 38 N.H. 298,300 (1994) | vi, viii,6,11 |
| Broderick v. Watts, 136 N.H. 153, 160 | 7 |
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## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Amendment 1 and is set forth in APPENDIX (Z)
United States Constitution Amendment Fourteen and is set forth in APPENDIX (R).
28 U.S.C 1254 (1)
42 U.S.C.A. Sec. 1983 is set forth in APPENDIX (S).
New Hampshire RSA 21:I (1994 Supp.)
New Hampshire RSA 310-53 (I) is set forth in APPENDIX (Y).
New Hampshire RSA 310-A: 70 is set forth in APPENDIX (X).
New Hampshire RSA 310-A: 71 and is set forth in APPENDIX (L).
New Hampshire 508:4
New Hampshire RSA 541-A:31 and is set forth in Appendix (P).
NEW HAMPSHIRE 641: (I) (II)

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES INVOLVED

1986 N.H. Code of Administrative Rules for licensed land surveyors
1993 N.H.Code of Administrative Rules for licensed land surveyors.

## EXHIBITS/DOCUMENTS

All of the following documents and laws were used in all of Petitioners' pleadings to the court, most under affidavit. Respondent at trial, on May 6-8, 1996, entered all of Petitioners pleadings as evidence with the concurrence of the court.

Attorney Donovan's false statement to the court, 88-E-203, appearing as APPENDIX (J) to this Petition.

BLLS letter of February 8, 1991 appearing as APPENDIX (K) to this PETITION..

N.H. RSA 310-A: 71, appearing as APPENDIX (L) to this Petition.

Respondent's voluntary statement to the BLLS appearing as APPENDIX (M) to this PETITION.

BLLS unlawful dismissal of Petitioners' complaint appearing as APPENDIX (N).

BLLS business records appearing as APPENDIX (O) to this PETITION.

N.H. RSA 541-A:31, appearing as Appendix (P) to this Petition.

N.H. RSA 310-A: 70 appearing as APPENDIX (X) to this Petition.

.Appeal Astro Spectacular, 38 N.H. 298,300 (1994) appearing as APPENDIX (V) to this Petition.

The BLLS letter of February 8, 1991, appearing as APPENDIX (K) to this Petition.

The BLLS fraudulent, illegal and void Order of Dismissal, appearing as APPENDIX (N) to this Petition.

The BLLS business record indicating the N.H. Attorney Generals review and authorization the dismissal of Petitioners complaint to the BLLS, appearing as APPENDIX (O) to this Petition.

U.S.C. Amends Amend 14, appearing as APPENDIX (R) to this Petition.

42 U.S.C.A. Sec. 1983, appearing as APPENDIX (S) to this Petition.

Escoe v. Zerbst, Warden, 295 U.S. 490, appearing as APPENDIX (U) to this Petition.

The Attorney General's brief to the United States Court of Appeals, Boston, Mass., acknowledging it was a custom and practice of the Attorney General to authorize the BLLS'S dismissal of Petitioners' and others' complaints after prehearing conferences without notice and hearing,, appearing as APPENDIX (Q) to this Petition.

U.S.C. Amends Amend (1), appearing as APPENDIX (Z) to this Petition.

## OPINIONS BELOW

The opinions, of the New Hampshire Supreme Court, reviewing the merits of Petitioners' appeals, are as follows:

(1). Denial of Petitioners' Motion for Reconsideration, of January 24, 1997, which appears as APPENDIX (A) to this Petition.

(2) Denial of Petitioners' Notice of Appeal of December 10, 1996, which appears, as APPENDIX (B) to this Petition.

(3) Denial of Petitioners Notice of Appeal of November 18,1992, on the court's granting Respondent's MOTION TO DISMISS, without prejudice, awaiting trial on Respondent's counterclaim, which appears as Appendix (C) to this Petition.

The opinions of the trial court, 92-C-653, are as follows:

(1). The court's order, of June 4, 1996, denying Petitioners' Motion to Set Aside the Jury Verdict, which appears as APPENDIX (D), to this Petition.

(2). The court's order of May 8, 1996, the jury verdict, which appears as APPENDIX (E) to this Petition

(3). The court's order, of November 11, 1995, denying Petitioners' MOTION FOR RECONSIDERATION on denial of Petitioners' FOR SUMMARY JUDGMENT, which appears as APPENDIX (F) to this Petition.

(4). The court's order of August 18, 1992, granting, Respondent's MOTION TO DISMISS, which appears as APPENDIX (F) to this Petition.

## JURISDICTION

The date, on which the New Hampshire Supreme court decided this case , 92-C-653, was December 10,, 1996. A copy of that opinion appears as APPENDIX (B) of this PETITION. A timely filed MOTION FOR RECONSIDER-

ATION was thereafter denied on January 24, 1997 and a copy appears at APPENDIX (A) to this PETITION
The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257(a).

**No._____**

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**IN THE SUPREME COURT**
**OF THE**
**UNITED STATES**
**OCTOBER TERM 1996**

Robert F. Smith & Joanne M. Smith
Petitioners
&
David R. Noes, LLS
Respondent

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**PETITION FOR WRIT OF CERTIORARI TO THE STATE OF NEW HAMPSHIRE SUPREME COURT**

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Petitioners, Robert F. and Joanne M. Smith, respectfully pray that a Writ of Certiorari be issued to review the judgment and opinion of the New Hampshire Supreme Court refusing to take an appeal from a lower court.

## STATEMENT OF THE CASE

The issue presented to this Honorable Court is as follows:

(1). Petitioners purchased a tract of land in Nottingham, N.H. in 1986 and recorded at the Rockingham County Registry of Deeds at Bk.2630 Pg.1761, on September 15, 1986.

(2). Petitioners hired a licensed land surveyor to subdivide a portion of that tract of land, called the John McCrillis Land, description specific in our deed.

(3). Petitioners, at the completion of the subdivision and awaiting planning board approval, applied to the Board of Selectman, Nottingham, N.H., for permits to open driveways from a public way to the individual house lots.

(4). Petitioners received .letter from John. Jean and David Fernald, Respondent's clients, through their legal counsel, that the tract of land Petitioners had subdivided was in their chain of title.

(5). Petitioners filed with the Rockingham County Superior Court, Exeter, N.H., a PETITION TO QUIET TITLE with the three Fernalds as defendants, along with others, as the Fernalds' claim created many over-lapping titles.

(6). Petitioners went to trial, Plaintiffs' Petition To Quiet Title, Docketed as 88-E-203, the last of November and the first of December 1988.

(7). Respondent at trial was the singular expert and material witness for the Fernalds.

(8). Respondent's clients, Fernalds, on the fifth day of a six day trial, disclaimed the deed and survey which they had, on two successive interrogatories, used as their claim to tittle.

(9). Respondent on the sixth and last day of trial, Respondent present throughout the entire trial, took the

witness stand and was sworn to tell the truth, the whole truth and nothing but the truth. Respondent recognized that swearing in his testimony (APPENDIX-I)

(10). Respondent's clients, Fernalds, through their legal counsel (APPENDIX J)explained to the court, when requested by the court, that the reason for the Respondent's presence, **as a material witness**, was to disprove a boundary line agreement recorded and approved by a probate judge, was an improper agreement, his clients claiming they should have been part of the agreement The Respondent agreeing with the Fernalds' legal counsel, knowing the statement was false.

(11). The trial court awarded the McCrillis Land to Respondent's clients, on appeal, the New Hampshire Supreme Court upheld the lower court's order, See 134 N.H., Smith v. Wedgewood Builders Corp., 125 at 129-130.

(12). Petitioners filed a complaint to the New Hampshire Board of Licensure Land Surveyors, an administrative/regulatory authority, against Respondent, as Respondent's testimony at trial was inconsistent with legally recorded documents: (A) Boundary line Agreement; (B) Fiduciary Deed; and (C) Respondent's own survey used as a reference in the Fiduciary Deed. **Each of these documents contained the same, by description, a common boundary line, indicating Inland Acres Assoc., our predecessor in title, the abutter of record**.

(13). Petitioners received from the BLLS a letter Dated February 8, 1991 (APPENDIX K) arranging a prehearing conference on March 14, 1991, within the communication was the stipulation that a **formal disciplinary hearing** would be held consistent with the legislative mandate of the word **"shall in** RSA 310-A:71 (APPENDIX L)

(14). Petitioners attended that prehearing conference at which time the Respondent, in a voluntary statement to the members of the BLLS (APPENDIX M) disclosed what the Respondent had concealed at trial. Respondent told the BLLS

that indeed Respondent had through his survey laid out a common boundary line between the Harold Lewis Fernal (Fernald) Estate and Inland Acres, our predecessor in title. Each abutter agreeing with the Respondent's placement of the proposed common boundary line, developed a Boundary Line Agreement, as authorized by statute, signed, notarized and recorded the agreement.

(15). Respondent identified the owners as: (A) his client the Harold Lewis Fernal (Fernald) Estate, a different Fernald; **not John, Jean and David Fernald**, and Inland Acres; the owners of the McCrillis Land, our predecessor in title.

(16). The BLLS dismissed Petitioners' complaint (APPENDIX N) with the authorization of the N.H. Attorney General John Arnold (APPENDIX Q) **without the formal (adjudicative) hearing** stipulated in its letter of February 8, 1991 (Appendix K)after the prehearing conference, without notice and hearing, violating the legislative mandate of the word "shall" mandated under N.H. RSA 541-A:31 III (APPENDIX (P)

(17). Attorney General Jeffrey Howard in a brief to the U.S. Court of Appeals for the First District, Docket No. 95-1520, (APPENDIX Q) indicated that the BLLS did by custom and practice dismiss complaints after prehearing conferences without formal hearings, in violation of the legislative mandate of N.H. RSA 310-A:71 HEARINGS (APPENDIX L), a flagrant abuse of Petitioners' constitutional rights under U.S.C. Amends Amend 14 (APPENDIX R) and Petitioners' civil rights under 42 U.S.C.A, Sec. 1983 (APPENDIX S).

(18). The value of the McCrillis Land, as a subdivision, at time of trial, was between **325,000.00** and **$400,000.00**. Respondent's clients received a free survey and subdivision plan!

(19). Petitioners, based on the Respondent's voluntary admission to the BLLS (Appendix M), concerning

the legal ownership of the McCrillis Land, at the time of his survey, and Respondent's clients' legal counsel's trial statement (APPENDIX J) which clearly indicated a prior inconsistent statements, filed a complaint to the court. The fundamental issues were concealment of material facts, conspiracy to conceal material facts and a request for monetary damages.

(20). Respondent filed a counterclaim (APPENDIX T) using the unlawful order of the BLLS (APPENDIX N), as the bases of the counterclaim. Petitioners objected to the counterclaim, **as an adjudicative hearing had not been held**, and Petitioners had been deprived of the constitutional requirements of notice and hearing, under RSA 542-A;31 III (ATTACHMENT P) that in contested cases all parties "**shall**" be afforded an opportunity for an **adjudicative proceeding** after reasonable notice.

(21). The court (Gray, J), dismissed Petitioners' complaint (APPENDIX H),for the following reasons: (A) Respondent, not in our employment, owed us no duty; (2) complaint filed untimely; and (C) no state action involved. The court, (Gray ,J.) allowed the counterclaim to stand awaiting trial over Petitioners' objections, **an adjudicative hearing not held in compliance to the legislative mandate of RSA 310-A:71** (APPENDIX L). The fraudulent/illegal order (APPENDIX N) of the BLLS **void.** See Escoe v. Zerbst, Warden, 295 U.S. 490,494 (1935) (APPENDIX U). This opinion by this Court is a beautiful teaching tool because of it simplicity, not obtuse, and straight forward detailing the necessity for the courts to follow the legislative mandate of the word "**shall**," (e.g. RSA 310-A:71 Appendix L),as written into statute Also See Appeal Astro Spectacular, 138 N.H. at 300 (APPENDIX V); Shillady v. Elliot Community Hospital, 114 N.H. 321, 323; Lakeman v. LaFrance, 102 N.H. 300,304; Bronstein v. GZA GeoEnvironmental, 140

N.H. 252, 253; Marquqay v. Eno, 139 N.H. 713, 714,715; Broderick v Watts 136 N.H. 153, 160.

(22). Petitioners filed a timely MOTION TO SET ASIDE with RELATED RELIEF, which was denied (APPENDIX G).

(23). Petitioners filed a MOTION FOR RECONSIDERATION OF PETITIONER'S MOTION OF SUMMARY JUDGMENT requesting dismissal of Respondent's counterclaim, which was denied (APPENDIX F).

(24). Trial on Respondent's counterclaim (APPENDIX T) was held on May 6-8, 1996, over Petitioners' objection that as **an adjudicative hearing had not been held**, as mandated by the state's legislature under N.H. RSA 310-A:71 (APPENDIX L), and stipulated by the BLLS letter of February 8, 1991 (APPENDIX K). The BLLS ORDER OF DISMISSAL (APPENDIX M) used in Respondent's counterclaim was both **void** and **illegal**.

(25). The court (Murphy, J.), to offset our objection to the trial, knowingly; consciously; intentionally; and deliberately misinterpreted, the legislative mandate of RSA 310-A:71, that an **adjudicative hearing need not be held on all written complaints** (APPENDIX W), ignored the BLLS letter of February 8, 1991 (APPENDIX K) stipulating **a formal (adjudicative) would be held,** to manage, control, and determine the outcome of a jury verdict. Justice Murphy was quite successful. The jury awarded the Respondent **$75,000.00** for his misconduct. **This will translate into approximately $110,000.00, when all is finished, not counting the lost value of the McCrillis Land; $325,000.00 to $4000,00.00; to his clients the Fernalds. Not a bad return for perjury and the obstruction of justice.**

(26). The language of the statute, New Hampshire RSA 310-A:70 (APPENDIX X), is specific concerning

disciplinary proceedings and provides the BLLS with two pathways to the proceeding; (a). upon its own initiative, (b) **Upon written complaint**. The BLLS letter of February 8, 1991 (APPENDIX K) indisputable indicates the Board chose, **(b), PETITIONERS' WRITTEN COMPLAINT.**

## REASONS FOR GRANTING THE WRIT

Certiorari should be granted for the following reasons:

(a). That the trial court, (MURPHY, J.) **knowingly**, **intentionally**, **consciously** and **deliberately** misinterpreted (APPENDIX W) a statute, RSA 310-A-71 (APPENDIX L), deliberately disregarded the BLLS letter of February 8, 1991 APPENDIX K), stipulating to Petitioners that a formal (disciplinary) would be held, **to control, manage and influence the outcome of a jury verdict with the intent to damage Petitioners**. The Court accomplished its goal, as Petitioners' were damaged severely, when the jury awarding the Respondent **$75,000.00**, for Respondent's misconduct, perjury and the obstruction of justice at trial, 88-E-203, on December 1, 1988.

(b). The trial court (Murphy, J.) allowing the Respondent, by refusing to grant Petitioners' continuing objections to Respondent's counterclaim and the trial, **the BLLS not holding an adjudicative hearing as required by law,** N.H. RSA 310-A:71 (APPENDIX L),to use an illegal order (APPENDIX N) in a legal manner for illegal purpose, the awarding of illicit monetary damages.

(c). The trial court (Gray, J.) dismissed Petitioners' complaint incorrectly, as Respondent had both a common law duty and a statutory duty to tell the truth, the whole truth, and nothing but the truth, as mandated by N.H. RSA 310-A:70 (APPENDIX X). Whether or not he was in Petitioners' employment had no bearing on the Respondent's common law and statutory duties to carry out the legislative

mandate of RSA 310-A:53 (I), (APPENDIX Y) the SAFEGUARD OF PROPERTY.

(d). The trial court (Gray, J.) dismissed Petitioners' complaint as being untimely. Petitioners first learned what material facts Respondent had concealed at trial on March 14, 1991 (Appendix M),at the BLLS, verified by his legal counsel, Donald Whittum, on October 25, 1991 (APPENDIX Z), and as a sworn witness for Respondent on May 6-8, 1996. Attorney Whittum admitted to the jury that he knew Respondent, under oath had concealed material facts at trial. **Attorney Whittum also knew Justice Murphy would not report his conduct to the Professional Conduct Committee of the New Hampshire Supreme Court.**

(d). Petitioners complaint to the court was filed on March 13, 1992, one year after the Respondent's voluntary admission to the BLLS (APPENDIX M),on March 14, 1991, and confirmed by his legal counsel, Donald Whittum, on October 25, 1991 (APPENDIX Z), well within the legislative intent of RSA 508:4 CONCEALMENT OF MATERIAL FACTS and CONSPIRACY TO CONCEAL MATERIAL FACTS.

(d). The trial court (Gray, J.), by not dismissing Respondent's Counterclaim, allowed Respondent to use an illegal order (APPENDIX N) in a legal manner for illegal purpose, illicit monetary gain, knowing it was in violation of Petitioners' constitutional rights (APPENDIX R).

(e). The failure of the New Hampshire Supreme Court to take Petitioners' NOTICE OF APPEAL (APPENDIX B) **and denial of Petitioners' MOTION FOR RECONSIDERATION (APPENDIX A) sanctioned** the trial courts departure from the accepted course of judicial proceedings by allowing the Respondent to use an illegal order (APPENDIX N) in a lawful manner for illegal purposed, the illicit gain of monetary damages.

(f). The failure of the New Hampshire Supreme Court to take Petitioners' NOTICE OF APPEAL (APPENDIX B)

denied Petitioners the right to a ruling from the Court on the state's legislatures intent of the word 'shall" as written in RSA 310-A:71 (Appendix L).

(g). The failure of the New Hampshire Supreme Court to take Petitioners' NOTICE OF APPEAL (APPENDIX B) allowed the Court to escape clarification of the issues, whether or not there was an obstruction of justice; constitutional (APPENDIX S), and statutory due process violations (APPENDICES L, P,X, & Y); and civil rights violations under 42 U.S.C.A Sec. 1983 (APPENDIX S), on the part BLLS, **when it dismissed Petitioners' complaint without an adjudicative hearing**, in violation of the legislative mandate of RSA 310-A:71 (Appendix L), the stipulation in the BLLS letter of February 8, 1991 (APPENDIX K), **that a formal (disciplinary) hearing would be held**, and promulgated its illegal order (APPENDIX N) to damage Petitioners in the courts..

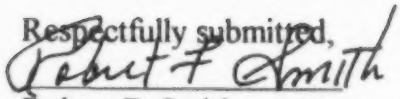
(h). The failure of the NEW HAMPSHIRE SUPREME COURT to take Petitioners' NOTICE OF APPEAL allowed the trial courts (Gray, McHugh and Murphy, J.) to: (1) depart from the rule of constitutional (APPENDIX S); statutory (APPENDICES L,P X& Y); and common law; (2) granted Respondent and his attorney the use of an illegal order (APPENDIX N) in a legal manner for illegal purpose, the gain of illicit monetary damages; and (3) to ignore the customary practice of fairness and impartiality, due to Petitioners; calls for the exercise of this Court's Supervisory power

## CONCLUSION

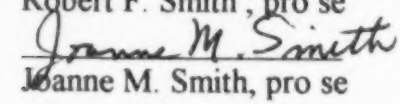
For the above reasons a writ of certiorari should issue to review the judgments of the trial court (1)

Dated April ____, 1997

Respectfully submitted,



Robert F. Smith , pro se



Joanne M. Smith, pro se

(1) If this Court elects not to address the issues presented in this writ at the present time, it is requested that the writ issue and the matter be remanded to the New Hampshire Supreme Court for reconsideration in light of this court's opinion Escoe v. Zerbst, Warden and the New Hampshire Supreme Court opinion Appeal Astro Spectacular.

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

In Case No. 96-436 Robert F. & a. v. David R. Noyes, LLS., the court upon January 24, 1997, made the following order:

Plaintiffs' motion for reconsideration is denied.

Distribution:
Mr. Robert F. Smith
Mrs. Joanne M. Smith
Donald F. Whittum, Esquire
Clerk, Rockingham County Superior Court 92-C-653
Honorable Douglas R. Gray
Donna K. Nadeau, Supreme Court
File
Howard J. Zibel
Clerk

**APPENDIX (A)**

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 96-436, Robert F. Smith & a. v. David Richard Noyes., LLS, the court upon December 10, 1996, made the following order:

The court having reviewed the notice of appeal and appendix, the decision below is summarily affirmed in accordance with Rule 25(1)(a) on the bases that no substantial question of law is presented by the appeal, and the court does not disagree with the result below. Defendant's motion for summary affirmance is therefore, moot.

Distribution:
Mr. Robert F. Smith
Donald F. Whittum, Esquire
Clerk, Rockingham County Superior Court 92-C 653
Honorable Douglas R. Gray
Donna K. Nadeau, Supreme Court
File

Howard J. Zibel,
Clerk

**APPENDIX (B)**

**THE STATE OF NEW HAMPSHIRE**

**SUPREME COURT**

92-C-563 Robert F. Smith & a. v. David R. Noyes, LLS

The court upon November 18, 1992 made the following order:

Plaintiffs' notice of appeal is declined, see Rule 7(1), without prejudice to raising the issues in subsequent appeal either upon conclusion of the entire case in superior court or by a properly filed interlocutory appeal in accordance with Rule 8.

Distribution:
Rockingham County Superior Court
Mr. Robert F. Smith
Honorable Douglas Gray
Donald Whittum, Esq.
Theresa H. Hayes, Supreme Court
File
David Noyes (11/23/92)

**APPENDIX (C)**

STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS SUPERIOR COURT

Notice of Decision

Joanne M. Smith
88 Main Street
Exeter, N.H. 03833

92-C-0653 Smith v. Noyes, LLS

Please be advised that on 6/04/96 Judge Murphy made the following order relative to:

Objection-Motion to Set Aside; Denied

06/10/96

Raymond W. Taylor, Clerk
1 Hampton Road
Exeter, N.H. 03833
603-772-3714

cc: Donald F. Whittum
Robert F. Smith

**APPENDIX (D)**

STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS SUPERIOR COURT

Notice of Decision

Robert F, Smith
88 Main Street
Exeter, N.H. 03833
92-C-0653 Smith vs. Noyes, LLS

Please be advised that on 5/08/96 Judge Murphy made the following order relative to:

Copy of verdict enclosed

05/09/96

Raymond W. Taylor, Clerk
1 Hampton Road
Exeter, N.H. 03883
603-772-3714

cc; Joanne M. Smith
Robert F. Smith
Donald F. Whittum

**APPENDIX (E)**

**THE STATE OF NEW HAMPSHIRE**

Rockingham County Superior Court

No. 92-C-653 April Term 1996

Plf. Robert F. and Joanne Smith v. David R. Noyes Deft.

Defendant's Verdict

The jury find for the Defendant and assesses damages in the sum of Seventy Five Thousand dollars and no/100 cents

Joseph Caelleto, Foreperson

**APPENDIX (E-1)**

STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS SUPERIOR COURT

Notice of Decision

Robert F. Smith 88 Main Street
Exeter, N.H. 03833

92-C-o653 Smith v. Noyes, LLS

Please be advised that on 11/15/95 Judge McHugh made the following order relative to:

**Motion to Reconsider; Denied**

"Plaintiffs' Motion for Reconsideration of their Motion for Summary Judgment is denied."

12/04/95

Raymond W. Taylor, Clerk
1 Hampton Road
Exeter, NH 03833
603-772-3714

cc: Joanne Smith
Donald F. Whittum

**APPENDIX (F)**

**THE STATE OF NEW HAMPSHIRE**

**SUPERIOR COURT**

Rockingham County September 03, 1992

Smith, Robert F. etal vs. Noyes LLS., David R.

Please be advised that on September 3, 1992 the Court, Gray, J., made the following order on Plaintiffs' Motion to Set Aside and Related Relief. (statement of

:Motion Denied"

_____

Raymond W. Taylor, Clerk
Admin. and Justice Bldg.
One Hampton Road
Exeter, N.H. 03833-4823
Tel: (603) 772-3714

Robert F. Smith
P.O. Box 83
Nottingham, N.H. 03290

cc: Smith Joanne
Whittum, Donald

**APPENDIX (G)**

**THE STATE OF NEW HAMPSHIRE**

**SUPERIOR COURT**

ROCKINGHAM COUNTY August 18,1992

RE: 92-C-00653

**NOTICE OF DECISION**

Smith, Robert F etal vs. Notes, LLS, David R,

Please be advised that on August 18, 1992 the court Gray, J, made the following order on the motion to dismiss

"Motion granted Plaintiffs claims are either barred by the Statute of Limitations, failed to show any duty owed to Plaintiffs or, with respect to the 42 USCA 1983 etc. claims did not allege "state" action."

S/_____
Raymond W. Taylor, Clerk
Administrative and Justice Bldg.
One Hampton Road
Exeter, N.H., o3833-4823
Tel; (603) 772-3714
Robert F. Smith cc; Whittum, Donald F.
PO Box 83, Nottingham, N.H. 03290

**APPENDIX (H)**

**EXCERPT FROM RESPONDENT'S TRIA TESTIMONY, PETITIONERS' PETITION TO QUIET TITLE,DECEMBER 1, 1988, VOL VI.,Pg.,60**

Noyes "...[I] just swore to tell the truth, the whole truth and nothing but the truth. We are getting into an area where the whole truth plays on the issue...."

**APPENDIX (I)**

**ATTORNEY DONOVAN'S STATEMENT ON DECEMBER 1, 1988 TO THE TRIAL COURT AT THE COURT'S REQUEST, VOL VI; Pg. 69.**

Mr. Donovan: "...[W]hat I don't want this to creep in. I don't want this to be any indication of anything different than the parcel that mu clients claim is the parcel we've been telling Mr. Townsend that we have been claiming a long time now. The purpose of all the examination is for this witness to show that this boundary line agreement made absolutely no determination of the boundar line on the north part of that because there was no need of it...."

**COMPARE WITH APPENDIX (M)**

Noyes: "...[Y]es, they came back to me and asked me to explain the problem to Inland Acres, which I did. Inland Acres with legal council (counsel),Harold Fernal (Fernald) estate with legal council (counsel) decided to resolve that problem with a boundary line agreement, and they asked me to set two iron rods, which they agreed on, which I did...."

**APPENDIX (J)**

STATE OF NEW HAMPSHIRE

Joint Board of Licensure and Certification

February 8, 1991

Robert F. Smith
Old Gile Road
Nottingham, N.H.. 03290
Dear Mr. Smith:

The board is in receipt of your letters dated February 22 & 27, 1990 and January 22, 1991 stating your complaint against David Noyes r lative to N.H. Statute and Code of Administrative Rules. **The board has reviewed you letters and proposes to process your complaint acknowledging you as complainant.**

To this end the board has scheduled a pre-hearing conference in this matter to take place at its offices at 57 Regional Drive, Concord, N.H. on March 14, 1991 at 3:30 P.M. 30 minutes has been allowed for this conference.

The following matters will be considered at the pre-hearing conference:
1). simplification of the issues in the proceeding;
2) stipulations or admissions as to issues of fact or proof by consent of the parties;
3) changes to standard procedures desired having any bearing on the matter by consent of the parties;
4) consolidation of examination of witnesses by the parties at hearing of this matter;

**APPENDIX (K)**

5) offers of settlement;
6) any other matters that may aid in the disposition of this proceeding;

**No formal testimony will be taken at this conference and any statements that you make will be without prejudice to your ability to proceed to a formal hearing on this matter.**

As complainant you will be expected to be present to state your complaint against Mr. Noyes and to address such matters as stated above as may be appropriate. Failure to personally attend the pre-hearing conference to present your case may constitute default and may lead to the board's dismissal of your complaint.

Thank you for your attention.

Sincerely.
Robert J. Carpenter, LLS
Chairman

**APPEND (K-1)**

## N.H. RSA 310-A:71

310-A:71 HEARINGS. The board shall take no disciplinary action without a hearing. At least 14 days prior to a hearing, both parties to a disciplinary proceeding shall be served, either personally or by registered mail with a written copy of the complaint filed and notice of time and place for hearing. All complaints shall be objectively received and fairly heard by the board, but no complaint shall be acted upon unless in writing. A hearing shall be held on all written complaints received by the board within 3 months of date of notice of complaint was received by the accused unless otherwise agreed to by the parties. Written notice of all disciplinary decisions made by the board shall be given to both parties to the proceeding upon their issuance. Orders of the board shall be subject to rehearing and appeal in the manner prescribed by RSA 541.

**APPENDIX (L)**

EXCERPT OF RESPONDENT'S VOLUNTARY STATEMENT AT THE N.H. BOARD OF LICENSURE FOR LAND SURVEYORS ON MARCH 14, 1991 CONCERNING HIS SURVEY AND DISCLOSING WHO HE KNEW TO BE THE TRUE ABUTTERS IN A BOUNDARY LINE AGREEMENT.

Noyes "...[D]uring the annalists (analysis) of the deeds that I looked at and the field for physical evudence I found I discovered there was a problem in that there was two surveys done for Inland Acres that overlapped onto the Harold Fernald track (tract). I informed the Harold Fernald Estate through Archie Fernald, of the problem and indicated that it needed to be resolved. Which he and his sister pursued...."

Kelly This was a result of your search?

Noyes "...Yes, they came back to me and asked me to explain the problem to Inland Acres, which I did. **Inland Acres with legal council (counsel), Harold Fernal (Fernald) estate with legal council (counsel) decided to resolve that problem with a boundary line agreement**, and they asked me to set two iron rods, which they agreed on, which I did...."

Kelly Right , you were aware of the overlap.at the time of recording of the map? But it doesn't depict it?

Noyes Yes, but it doesn't depict it. **The people that owned the land in the area where the problem was decided how they wanted to handle it...."**

**APPENDIX (M)**

STATE OF NEW HAMPSHIRE

BOARD OF LICENSURE FOR LAND SURVEYORS

IN THE MATTER OF

Robert Smith v. David Noyes

On March 14, 1991, a pre-hearing conference was held at the Joint Board offices located at 57 Regional Drive, Concord, New Hampshire, relative to a complaint filed by Robert Smith against David Noyes, LLS. The nature of the complaint was determined to come under LAN 502.01, 502.o2 and 502.03, sections relative to proper research procedures; and secondarily, a question of unprofessional conduct as outlined in RSA 310-A:70. The first part of the complaint addresses information shown on a survey plan prepared by Mr. Noyes in 1976 and subsequent testimony in court in 1988. The second part of the complaint addresses alleged comments made by Mr. Noyes.

The Board has considered information presented prior to and discussed at the pre-hearing conference. At a regularly scheduled meeting of the Board held on May 16, 1992, the complaints were discussed and action taken as follows:

Part 1 Sec LAN 502.01, 502.02, 502.03 -

**This section concerns the interpretation of a plan prepared by Mr. Noyes in 1976 and the allegation that information shown on this plan was contradicted by subsequent testimony provided by Mr. Noyes in court.**

**APPENDIX (N)**

The Board has examined a copy of this plan and does not agree with Mr. Smith's interpretation. It is not clear to this Board that an abutter or abutters are identified along the entire southerly line of the property.

Since this interpretation is key to Mr. Smith's complaint, the Board believes that pursuit of this matter through a full disciplinary proceeding is not warranted. This complaints dismissed.

Part II RSA 310-A:70 II Unprofessional Conduct

This complaint concerns statements alleged to have been made by Mr. Noyes to a contractor in the employ of Mr. Smith This complaint is based on statements as reported to Mr. Smith. The alleged statements were neither directed towards Mr. Smith nor made in his presence.

Since this constitutes heresay information, the Board believes the pursuit of this matter through a full disciplinary hearing has no basis. This complaint is dismissed.

The above actions were taken by unanimous vote of the Board at there meeting on May 16, 1991. Board members in attendance were: Robert Carpenter, Chairman; Melvin E. Jenkins; John G. Kelly; and Judith A. MacDonald.

**APPENDIX (N-1)**

EXCERPT FROM NEW HAMPSHIRE BOARD OF LICENSURE FOR LAND SURVEYORS BUSINESS RECORDS

(full context of business records in Petitioners' pleadings)

This business record indicating Attorney General John Arnolds review and authorization for BLLS to unlawfully dismiss Petitioners' Complaint, **without an adjudicative hearing**, in violation of the legislative mandate of RSA 310-A:71 (APPENDIX-) and the BLLS letter of February 8, 1991 (APPENDIX -) stipulating a formal (disciplinary) hearing would be held.

6. Unfinished business -

a.

b. **Smith v. Noyes Complaint - moved - seconded and voted 3-0 to dismiss complaint Draft response for board/AG review**

c.

**APPENDIX (O)**

N.H. RSA 541-A:31

**AVAILABILITY OF ADJUDICATIVE PROCEEDINGS; CONTESTED CASES NOTICE; HEARING AND RECORD**

**RSA 541-A:31 III**: In a contested cas, all parties shall be afforded an opportunity for an adjudicative proceeding after reasonable notice. The notice shall include:

(a). A statement of time, place, and nature of hearing.

(b). A statement of legal authority under which the hearing is be held.

(c). A reference to the particular sections of the statute and rules involved.

A short and plain statement of issues involved.

**RSA 541-A:31 IV**. Opportunity shall be afforded all parties to respond and present evidence and argument on all the issues.

**APPENDIX (P)**

EXCERPT FROM NEW HAMPSHIRE ATTORNEY GENERAL JEFFREY HOWARD'S BRIEF TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST DISTRICT, BOSTON, MASS>

(Full text of Brief Petitioner's Pleadings 92-C-0653)

"...[T]he most that can be said of the Smiths is that they fall in the group of complainants **whose complaints were dismissed following a prehearing conference**. On the facts of this case, they are the only members of this group. As the District Court held, to state an equal protection claim, the Smiths must allege a violation of a fundament right or allege facts to show they were intentionally discriminated against as members of an identifiable class, not merely that they were unfairly as individuals (citations omitted)...." (Emphasis added)

CONCLUSION

For the reasons set forth herein, affirm the order of the District Court dismissing this action.

Respectfully submitted,

New Hampshire Board
Land Surveyors and members
By their attorneys,
Jeffrey R. Howard
Attorney General

**APPENDIX (Q)**

## UNITED STATES CONSTITUTION FOURTEENTH AMENDMENT

Section (1) All persons born or naturalized in the United States, and are subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process if law; nor deny to any person within its jurisdiction the equal protection of the laws.

**APPENDIX (R)**

42 U.S.C.A. SECTION 1983

Any person under color of any statute, ordinance, regulation, custom or usage of any State or Territory subjects any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in any action at law suit in equity, or other proceedings for redress.

**APPENDIX (S)**

EXCERPT RESPONDENT NOYES' COUNTERCLAIM

COUNT I-HARASSMENT

A. That on or about February 27, 1991 and on October 23, 1990 the Plaintiffs filed a complaint with the Board of Licensure for Land Surveyors against Defendant in which the Plaintiffs alleged: (1) that the defendant was negligent in the preparation of a plan in 1976; and (2) and that the defendant had acted in an unprofessional manner toward a logger working on Plaintiffs' property.

B. That the Plaintiffs sent copies of the complaints to numerous individuals including the Governor, Governor's legal counsel, the U.S. Attorney, the Federal Bureau of Investigation, WHDH Channel 7, and others.

C. That on or about September 10, 1991 the Board promulgated a written opinion that the complaints against the Defendant had no merit and dismissed the complaint.
D. The Plaintiffs have engaged in and are continuing to engage in a course of conduct which is designed to annoy, intimidate, embarass and otherwise harass the Defendant.

E. That the action of the Plaintiffs in pursuing their aforementioned course of conduct have caused the Defendant great stress, emotional pain and suffering, and monetary expense.

COUNT II-ABUSE OF PROCESS

1. That on March 14, 1991 a prehearing conference was

conducted by the Board of Licensure for Land Surveyors on complaints filed by Plaintiffs with the Board on February 27, 1991 and October 23, 1990.

2. That on or about September 10, 1991 the Board unanimously promulgated its decision finding no professional misconduct on the part of the Defendant and dismissing the Plaintiffs' complaints.

3. That the decision of the Board constitutes an "order" within the meaning of RSA 310-A:71 and, as was "subject to rehearing and appeal in the manner prescribed by RSA 541."

4. The Plaintiffs have failed to follow the procedure set forth in RSA 541 for rehearing and appeal set forth therein.

5. The Defendant believes and avers that the Plaintiffs have not brought the within action for the purpose of righting any alleged wrong committed by the Defendant, but rather for the purpose of intimidation annoying, and harassing the Defendant and causing him legal expenses.

6. That the failure of Plaintiffs to follow the statutory appeal procedure and the bring of the within action constitutes an abuse of process. For this the Defendant is entitled to attorney's fees and costs.

Count III-FRIVOLOUS ACTION

The Defendant repeats each and every allegation contained in Counts I and II above and futher says that because the Plaintiffs complaint fails to state any cause of action against

the Defendant, pursues a claim which is barred by the Statute of Limitations, and fails to follow the appeals procedure established by RSA 541, the Plaintiffs action is a frivolous action within the meaning of RSA 507:15 for which the Defendant is entitled to attorney's fees and costs.

Respectfully submitted,
David Richard Noyes
By his Attorneys, Cooper, Hall,
Whittum & Shillaber, P.C.

Dated: May 29, 1992

By:_____
Donald F. Whittum, Esquire
76 Wakefield St. Box 1200
Rochester, N.H. o3867
(603) 332-1234

**APPENDIX (T-2)**

## NEW HAMPSHIRE RSA 310-A:53 GENERAL PROVISIONS

I, In order to safeguard property and to promote the public welfare, the practice of land surveying in this state is hereby declared to be subject to regulation in the public interest.

**APPENDIX (Y)**

EXCERPTS FROM MOTION TO QUASH SUBPOENA FILED BY ATTORNEY GENERAL JOHN ARNOLD OCTOBER 25, 1991,STRAFFORD COUNTY SUPERIOR COURT, DOVER, N.H., CONCERNING RESPONDENT'S A VOLUNTARY STATEMENT TO THE NEW HAMPSHIRE BOARD OF LICENSURE FOR LAND SURVEYORS ON MARCH 14, 1991.

**STATEMENT #20**

. "Upon discussion with counsel for Wedgewood Builders, Attorney Donald Whittum, there is no issue as to the genuineness or factual accuracy of the documents originating from the State Board's March 14, prehearing conference, including the copy of the tape and the transcript which the Smiths already have in their possession."

**STATEMENT #24**

Opposing counsel does not contest the factual accuracy or admissability of the March 14, 1991 conference tape or the transcript thereof or any of the correspondence, and, therefore, the requirement that the State Board duplicate and certify all of this material is burdensome and frivolous.The Smiths are aware of opposing counsel does not intend to interpose an objection to the lack of certifaction or of the the State Board materials herein cited.

Respectfully submitted,
Robert J. Carpenter, Chairman
By His Attorneys
The Office of Attorney General
John P. Arnold, Attorney General

**APPENDIX (Z)**

## CONSTITUTION OF THE UNITED STATES
### AMENDMENT ONE

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of people peaceably to assemble, and to petition the government for redress of grievances.

**APPENDIX (Z)**

**SUBSTANTIVE LAW**
**BLACK"S DICTIONARY**
Sixth Edition (1990)

"...[T] part of law which **creates**, defines, and **regulates** rights and duties of parties as opposed to' adjective, procedural, or remedy law,' which prescribes method of enforcing the rights or obtaining redress for their invasion. Allen v. Fisher, 574 P.2d 1314, 1315. The basic law of rights and duties (contractual, criminallaw, tort law, law of wills, etc.) as opposed to procedural law (law of pleading, law of evidence, law of jurisdiction, etc).

**SUBSTANTIVE LAW**
The American Heritage Dictionary of the English Language.

adj.
(1). Substantial, considerable
(2). Independent in existence or function, not subordinate
(3). Not imaginary, actual, real
(4). Of or relating to the essence of substance: essential: substantive information.
(5). Having a solid base: firm

**SUBSTANTIAL**
Roget's Thesaurus Synonyms & Antonyms
1988 Edution

(1). Important; (2) Essential; Valuable; (4) **Material**

**APPENDIX (AA)**